Holland American Wafer Company *and* Local No. 70, Bakery and Confectionery Workers International Union, AFL-CIO *and* James Host. Cases 7-CA-17795, 7-CA-17890, 7-CA-18871, and 7-CA-18652

February 17, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 8, 1981, Administrative Law Judge Michael O. Miller issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Holland American Wafer Company, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete from paragraph 1(f) the words "delaying or withholding the granting of scheduled wage increases or."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] In adopting the Administrative Law Judge's Decision we find it unnecessary to determine whether Respondent's unilateral withholding of the January 1980 wage increase violated Sec. 8(a)(5) of the Act. We have found that conduct related to and concurrent with the denial of the wage increase violates Sec. 8(a)(3) and (1) and we have provided appropriate remedial requirements. We have also determined that Respondent violated Sec. 8(a)(5) by other actions independent of the wage issue and have set forth appropriate bargaining requirements. We have modified the Administrative Law Judge's recommended Order and notice accordingly.

In addition, we note that no exceptions were filed with respect to the Administrative Law Judge's dismissal of certain 8(a)(5), (3), and (1) allegations.

[2] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten our employees that we will withhold or delay increases or advise them that wage increases have been withheld or delayed because they have selected Local No. 70, Bakery and Confectionery Workers International Union, AFL-CIO, as their collective-bargaining representative.

WE WILL NOT interrogate our employees concerning their union activities or the union activities of other employees.

WE WILL NOT solicit our employees to engage in direct bargaining with their employer.

WE WILL NOT delay or withhold the grant of wage increases because our employees have selected the Union as their collective-bargaining representative.

WE WILL NOT discriminate against our employees by delaying their recall from layoff status because of their union activities, membership, or support.

WE WILL NOT, without prior notice to and bargaining with our employees' collective-bargaining representative, unilaterally publish and promulgate employee handbooks containing changed provisions and rules or change other terms and conditions of their employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

WE WILL revoke the employee handbook which was issued effective January 1, 1981, to the extent that its provisions and rules are inconsistent with the employee handbook which was in existence prior to that date.

WE WILL make whole all of our employees, including James Host, for any loss of earnings they may have suffered because of our unlawful conduct.

WE WILL, upon request, bargain with Local No. 70, Bakery and Confectionery Workers International Union, AFL-CIO, as the exclusive bargaining representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All full-time and regular part-time production and maintenance employees and shipping and receiving employees employed by us at our Grand Rapids, Michigan, facility; but excluding all transport drivers, salesmen, office clerical employees, guards and supervisors as defined in the Act.

HOLLAND AMERICAN WAFER COMPANY

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge: These consolidated cases were heard before me on March 2 and 3, 1981, in Grand Rapids, Michigan, based on unfair labor practice charges filed by Local No. 70, Bakery and Confectionery Workers International Union, AFL-CIO, herein called the Union, and by James Host, an individual, and complaints and notices of hearing issued on behalf of the National Labor Relations Board, herein called the Board, by the Regional Director and Acting Regional Director for Region 7.[1] The complaints allege that Holland American Wafer Company, herein called Respondent, violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, herein called the Act. Respondent's timely filed answers deny the commission of any unfair labor practices.

All parties were afforded full opportunity to appear, to examine and to cross-examine witnesses, and to argue orally. The General Counsel and Respondent have filed briefs which have been carefully considered.

[1] The charges in Cases 7-CA-17795 and 7-CA-17890 were filed on May 21 and June 16, 1980, respectively. Complaints and amended complaints issued in regard to those charges on July 11 and August 19, 1980. The charge in Case 7-CA-18652 was filed on December 15, 1980, and complaint therein issued on January 30, 1981. The charge in Case 7-CA-18871 was filed on February 5, 1981, and the complaint stemming from those allegations issued on February 18, 1981.

Based on the entire record, including my careful observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS—PRELIMINARY CONCLUSIONS OF LAW

Respondent is a Michigan corporation engaged at Grand Rapids, Michigan, in the production, sale, and distribution of baked goods and related products. Jurisdiction is not in issue. The complaint alleges, Respondent admits, and I find and conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Union Campaign, Election, and Certification*

The Union began its campaign to organize Respondent's employees in July 1979. In the election conducted on October 18, 1979, the majority of Respondent's employees voted in favor of union representation.[2]

Respondent timely filed an objection to conduct affecting the results of the election alleging, essentially, that a representative of the Union had told employees that since it "also represented the employees of several of the Employer's customers, the [Union] could require these customers, if it chose, to put pressure on the Employer in order to enable the [Union] to negotiate an attractive contract." A hearing on this objection was held on November 14, and December 5, 1979. Hearing Officer Charles H. Byerley, Jr., issued his report and recommendation recommending that the Employer's sole objection be overruled in its entirety. Respondent filed exceptions to that report and recommendation. On May 15, 1980, the Board[3] adopted the Hearing Officer's findings and recommendations and certified the Union as the exclusive representative of the employees in the appropriate collective-bargaining unit, as described above.

On June 16, 1980, the Union filed its charge in Case 7-CA-17890 alleging that Respondent violated Section 8(a)(1), (3), and (5) of the Act by various acts and conduct, including the rejection of its demand for collective bargaining. On July 11, 1980, the Regional Director issued a separate complaint on the 8(a)(5) allegations of that charge which, it appeared, could be disposed of most expeditiously through the Board's summary judg-

[2] Respondent admitted that the following unit of employees is appropriate for collective-bargaining purposes:

All full-time and regular part-time production and maintenance employees and shipping and receiving employees employed by the Employer at its facility located in Grand Rapids, Michigan; but excluding all transport drivers, salesmen, office clerical employees, guards and supervisors as defined in the Act.

In that unit, 135 employees voted for the Union, 27 voted against, and 3 ballots were challenged.

[3] Unpublished decision.

ment procedures. On August 14, 1980, the General Counsel moved for summary judgment and on September 12, 1980, clarified its motion to be one for "Partial Summary Judgment," indicating that the General Counsel would, if necessary, be proceeding on the "Section 8(a)(1) and (3) allegations" set forth in the complaint which issued on July 14, 1980, in consolidated Cases 7-CA-17890 and 7-CA-17795. On January 14, 1981, the Board issued its Decision and Order[4] granting the General Counsel's Motion for Partial Summary Judgment, finding that Respondent had violated Section 8(a)(1) and (5) of the Act by its refusal to bargain with the Union, and ordering it to take appropriate remedial action.[5]

B. *Issues Relating to Respondent's Denial and Subsequent Grant of Wage Increases*

1. Past practice

The record establishes that for at least the last 10 years Respondent has granted an annual wage increase, usually accompanied by an increase in insurance, vacation, and/or holiday benefits. Between 1970 and 1973, those annual improvements were announced in varying months.[6] From January 1974 until January 1979, the improved wages and benefits were announced in December and took effect annually in January. The wage increases ranged from 10 to 35 cents per hour (3.8 to 9.9 percent) in those years.

2. Threats of denial and denial of the January 1980 wage increase

On the day of the representation election, and after the Union's victory had been announced, Shift Supervisor Tom Troeger told Linda Walker Anderson that she should realize that as a result of the union election she would not receive her January wage increase.[7]

Respondent's employees received no wage increase in January 1980, although the managerial and supervisory employees did.[8] When they did not receive the expected raises, a number of employees questioned their supervisors. Thus, when Sharon Crowner questioned Tom Troeger about the missing January 1980 raise, he told her, on several occasions in February and March 1980, that they would have gotten the raise if they had not voted the Union in but since it was in Respondent could not grant the raise because it would be against the law. Supervisor Guy Heintzleman made similar statements to Crowner, comparing the granting of the raise to bribery. Cora Jean Stevens similarly testified that Tom Troeger told her in February or March 1980 that the employees would not get their raise because of the Union. Tom Troeger repeated similar statements to Linda Anderson in that same time period. Eileen Brown testified that about mid-January Foreman John Troeger asked her, in a light vein, how she liked not getting a raise. She replied facetiously that she loved it. John Troeger then asked, "Well, you know why you didn't get a raise?" and explained that it was "because it is illegal for the Company to give us a raise." Further, sometime in early 1980 employee Frederick Sweet was told by Don DeRaad, the director of manufacturing services, "Well, right now we can't give a raise because if we give you a raise now . . . the Union will say we are trying to bribe the people from the Union and . . . if we do give you the raise we are going for the Union, so we can't give you the raise right now . . . he was right in between."[9]

According to both Plant Manager Tom Huizingh and DeRaad, Respondent's executives met in January 1980 to decide whether to grant the January pay raise. They decided to defer it. Huizingh testified that the action was taken because Respondent was afraid that any wage increase granted would prejudice any subsequent election if the Board were to sustain the pending objection to the election and order a second election. According to DeRaad, Respondent was assured that the Board would sustain its objection and order a second election and decided not to grant the raise because of the risk it would impose to the validity of a second election. Specifically, it was decided not to grant the raise until the Board reached a decision on its objections.[10]

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[4] 254 NLRB 429 (1981).

[5] On brief, Respondent renewed its motion, denied at the hearing, that the General Counsel be precluded from pursuing any of the 8(a)(5) allegations because he had already sought and been granted "Partial Summary Judgment" as to them. My original ruling is adhered to herein.

The General Counsel had issued two complaints: Case 7-CA-17890, which alleged those 8(a)(5) allegations which lent themselves to summary disposition; and consolidated Cases 7-CA-17795 and 7-CA-17890, which alleged violations of Sec. 8(a)(1) and (3) as well as those 8(a)(5) allegations which were not suitable for summary disposition. The Board, in granting the General Counsel's Motion for Partial Summary Judgment, made clear (in fn. 1 of its Decision) that it was disposing only of the separate, unconsolidated complaint in Case 7-CA-17890 and not the consolidated complaint, which, it noted, also contained allegations of 8(a)(5) violations. Thereafter, on January 30 and February 18, 1981, the Regional Director issued additional complaints in Cases 7-CA-18652 and 7-CA-18871, both of which contained specific allegations of 8(a)(5) violations and both of which were specifically consolidated with the consolidated complaint in Cases 7-CA-17890 and 7-CA-17795. Thus, notwithstanding that the Acting Regional Director's letter of September 12, 1980, which sought to clarify the situation, may have caused rather than eliminated confusion, I must conclude that the 8(a)(5) allegations of the charge in Case 7-CA-17890 other than those alleged in the separate complaint were still extant and unresolved, that the allegations set forth in the complaints before me have never been the subject of a motion for summary judgment, that Respondent was fully apprised at all times of the nature of the General Counsel's allegations, and that Respondent could not have been prejudiced by the misstatement in the September 12, 1980, letter.

[6] 1970 and 1971—June; 1972 and 1973—March. A second wage increase was also granted in October 1972.

[7] Anderson's testimony was credibly offered, was corroborated by similar testimony from other employees, and was uncontradicted. She acknowledged that Tom Troeger never said that it was specifically "because of the Union [that they were] not getting the raise"; however, his remarks were made in the framework of conversations concerning the Union and its election victory.

[8] Managers and supervisors had also received wage increases in both January and October 1979.

[9] DeRaad's testimony that he told Sweet that they could not give a raise at the present time because of the contested election and the possibility that the Board could misconstrue such a raise is not inconsistent with Sweet's testimony.

[10] Huizingh also testified that one of the reasons mitigating against the granting of a wage increase was the fact that Respondent was running "in the red" in regard to productivity during December 1979 and January 1980. I find this testimony unconvincing in light of his admissions that he was unfamiliar with the financial aspects of Respondent's business

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3. The Union's response

On March 20, 1980, the Union's lawyer wrote Respondent, stating:

> In [the Union's] behalf, we are advising you that we believe there has been an established policy to grant annual wage increases effective on or about 1/1/80. We are asking that you voluntarily provide the regular increase effective 1/1/80. In fact, it may be your legal obligation to do so at this time. You may assume that the Union will not oppose nor object to such an increase provided it is implemented in a non-discriminatory fashion.
>
> Lastly, we wish to advise that the Union reserves all bargaining rights regarding the same including the right to demand retroactive wage increases at a time a contract becomes effective.

Respondent's answer, dated March 28, 1980, was not directly responsive. It asserted that Respondent was "aware of its rights and obligations under Federal Law." It also made reference to the Union's obligations and to the pending objections.

4. The grant of a wage increase

As noted, the Board's Decision and Certification of Representative issued on May 15, 1980. On June 6, 1980, Respondent posted a notice to all of its employees announcing a 10-percent wage increase and an additional paid holiday. The notice, which contained no mention of the Union or its certification, stated as follows:

> This is to inform you that there will be a general wage increase applicable to all hourly rated employees effective May 15, 1980. For most people the amount of this increase is somewhat larger than usual. This reflects the fact that we had to defer our decision to a later date than usual this year.
>
> In further recognition of that delay, we also decided to add another holiday. The holiday will be observed during the Christmas season.

Plant Manager Huizingh testified that the raise was given at this time because, in view of the Board's order, Respondent then knew where it stood. In granting the wage increase, Respondent considered the delay and granted a larger increase than usual so that, in terms of the net effect on employees' earnings, the raise was equivalent to their having been given a somewhat smaller raise in January, he testified.

Respondent did not discuss the May 15 pay raise with the Union. The Union's response was to file an unfair labor practice charge.

5. Discussion and analysis of wage increase issues

The General Counsel contends that the supervisors' remarks, described above, unlawfully coerced the employees in violation of Section 8(a)(1), that the denial of the January wage increase was discriminatorily motivated in violation of Section 8(a)(3), and that both the denial of the wage increase in January and the grant of a wage increase in June, having been undertaken unilaterally, violated Section 8(a)(5) of the Act. Respondent, on the other hand, maintains that the withholding of the wage increase was mandated by Board law, that to do otherwise would have jeopardized the rerun election which it hoped to secure through its objection and would have exposed it to liability for an unfair labor practice charge, that it merely informed the employees, when asked, of its legal obligations, and that it properly granted the raise pursuant to the Union's request when the legal situation became clear. The issues are all interrelated and resolution hinges, in large measure, on the nature of Respondent's obligations at the time in question.

Respondent's obligation to bargain with the Union, and its correlative duty to refrain from making unilateral changes in the working conditions of unit employees, commenced upon the Union's election victory on October 18, 1979, notwithstanding that its objection to that election was pending until the Board certified the Union on May 15, 1980. As the Board stated in *Mike O'Connor Chevrolet-Buick-GMC Co., Inc., and Pat O'Connor Chevrolet-Buick-GMC Co., Inc.*, 209 NLRB 701, 703 (1974):

> The Board has long held that, absent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not yet been made. And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a)(5) and (1) for having made such unilateral changes. Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued. To hold otherwise would allow an employer to box the union in on future bargaining positions by implementing changes of policy and practice during the period when objections or determinative challenges to the election are pending.

See also *Allis-Chalmers Corporation*, 234 NLRB 350 (1978), enfd. in relevant part 601 F.2d 870 (5th Cir. 1979).

The violative unilateral changes may include either the denial of a benefit which, because of practice or promise, has become a term or condition of employment (see *Liberty Telephone & Communications, Inc., and Century Telephone Enterprises, Inc.*, 204 NLRB 317 (1973), and cases cited therein) or the grant of a benefit which is not a term or condition of employment because it involves the exercise of discretion. See, e.g., *Allis Chalmers Corporation*, 237 NLRB 290 (1978). See also *Mercury Industries, Inc.*, 242 NLRB 90 (1979), wherein a wage increase which was at variance with the employer's practice, granted while objections to an election were pending, was held objectionable as to the ultimately directed rerun election.

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and in light of certain inconsistencies between his testimony and Respondent's written statements of position submitted to the Regional Director.

Respondent contends that its history of granting wage increases at different times and in "random" amounts establishes that its granting of wage increases had not become an established term or condition of employment. As to the timing of its general increases I must disagree. In January of each of the 6 years preceding 1980, Respondent granted across-the-board increases to its employees. This, I find, is sufficient to establish the January increases as a term or condition of employment. See *St. Elizabeth Community Hospital*, 240 NLRB 937 (1979). Those increases have been uniform in amount within each year but were different in amount and/or percentages from year to year. The General Counsel adduced no evidence to establish that the amount was tied to any formula, such as cost of living or Respondent's profitability, such as might establish that the annual increase was determined without resort to discretion. The precise amount of that annual raise, then, was not an established term or condition of employment.

What, then, is Respondent's obligation when faced with an established practice of granting annual wage increases which, as here, includes elements of discretion in determining the amount of those increases? The Board has answered this question in *Oneita Knitting Mills, Inc.*, 205 NLRB 500 (1973), and subsequent cases. In *Oneita Knitting*, not unlike the instant case, the employer had a practice of annually reviewing each employee's record in order to determine the amount of the annual increase to be awarded; the employer continued to grant these raises, unilaterally, after the union was certified, contending that the annual raises were an established condition of employment, the denial of which would be an unfair labor practice. The Board held:

> An employer with a past history of a merit increase program neither may discontinue that program . . . nor may he any longer continue to unilaterally exercise his discretion with respect to such increases, once an exclusive bargaining agent is selected. *N.L.R.B.* v. *Katz*, 396 U.S. 736 (1962). What is required is a maintenance of preexisting practices, i.e., the general outline of the program, however the implementation of that program (to the extent that discretion has existed in determining the amounts or timing of the increases) becomes a matter as to which the bargaining agent is entitled to be consulted.

Though *Oneita Knitting* presents the reverse of the instant situation in that Respondent here withheld the increase while the employer in *Oneita Knitting* granted it, the principle is the same. *Southeastern Michigan Gas Company*, 198 NLRB 1221 (1972). See also *Wells Fargo Alarm Services, a Division of Baker Industries, Inc.*, 224 NLRB 1111 (1976).

Respondent has referred to "the quandary facing the Company" resulting from the Board's decisions in this area. While it is clear from the cases cited above that the quandry is more apparent than real, it must be noted that any existing predicament is of Respondent's own making; it was Respondent who chose not to bargain and, as noted, having so chosen, it acts or refuses to act at its peril. *O'Connor Chevrolet, supra*. The Court of Appeals in *N.L.R.B.* v. *Dothan Eagle, Inc.*, 434 F.2d 93, 98 (5th Cir. 1970), set it forth thusly:

> At first glance it might appear that the employer is caught between the proverbial "devil and the deep blue sea." It is an unfair labor practice to grant a wage increase during the campaign and bargaining periods, but at the same time it may be an unfair labor practice to refuse to grant an increase during this same period. Indeed, the employer in this case has made just this sort of an argument, claiming that it could not grant the pressroom employees their normal progression raises since to do so would have been an unfair labor practice. We find little merit in such arguments. The cases make it crystal clear that the vice involved in both the unlawful increase situation and the unlawful refusal to increase situation is that the employer has *changed* the existing conditions of employment. It is this *change* which is prohibited and which forms the basis of the unfair labor practice charge.

Accordingly, I find that by unilaterally withholding the January increase from its employees, Respondent has failed to bargain in good faith with the Union in violation of Section 8(a)(5) of the Act.

It follows from Respondent's erroneous position that Board law precluded it from granting the January wage increases that by withholding those increases and by informing the employees that it was doing so because of the Union, Respondent has discriminated against them in violation of Section 8(a)(3) and (1) and has interfered with, restrained, or coerced them in the exercise of their statutory rights in violation of Section 8(a)(1) of the Act. *Verona Dyestuff Division Mobay Chemical Corporation*, 233 NLRB 109 (1977); *Wells Fargo Alarm Services, supra; Florida Steel Corporation*, 220 NLRB 1201 (1975). As the Board stated in *Dorn's Transportation Company, Inc.*, 168 NLRB 457 (1967):

> By withholding salary increases, which it would have granted had there been no organizing campaign and so advising its employees, the Respondent restrained and coerced its employees and thereby violated Section 8(a)(1) of the Act. This is so despite the fact that the Respondent may have believed that it could not grant any raises because of a pending election petition.

Finally, I must reject as unfounded in fact or law Respondent's contention that its statements to employees, "[e]ven if not a technically accurate framing of the law in this area . . . were inherently uncoercive because they were not related to employee support for the Union." Statements which place the onus for denied or delayed wage increases upon a union or upon the fact that employees have selected a union as their representative inherently discourage employee support for that union. It must be noted here that most of these statements were

made at a time when Respondent was seeking a rerun election.[11]

Respondent's grant of the wage increase in June, effective as of May 15, 1980, stands on a different footing. Respondent was obligated to grant a wage increase. It was also obligated to bargain with the Union as to its size. However, on March 20, 1980, the Union waived its objections to the unilateral granting of a raise. And, while the Union had urged Respondent to grant the raise as of January 1, 1980, Respondent's granting of an apparently compensatorily larger raise effective May 15 is not so inconsistent with the Union's waiver as to render it inapplicable. Accordingly, I shall recommend that the allegation of the complaint pertaining to the May 15 wage increase be dismissed.

C. *The Antiunion Petition*

In or about February 1980, several employees prepared and distributed among their fellow employees petitions to the effect that they did not want the Union to represent them. Prior to the preparation of that petition at least two of them spoke with Don DeRaad. Thus, Frederick Sweet testified that about a month after his conversation with DeRaad concerning a wage increase he participated in the drafting of a petition and showed it to DeRaad. DeRaad, he said, told him it was a good idea.[12] According to DeRaad's recollection, when Sweet showed him the petition he told Sweet that Sweet was free to go ahead with it but would have to do it on his own time. Similarly, employee Harold Grusczynski testified that he asked DeRaad whether he would get in trouble for passing around a petition against the Union. DeRaad told him that such conduct was permissible and that if that was what the employees wanted to do they could go ahead and do it. However, according to Grusczynski, DeRaad told him that there were no guarantees on the outcome of such a distribution and he would have to circulate the petition on his own time.

Contrary to the General Counsel, I find nothing in the foregoing conduct which would violate Section 8(a)(1) of the Act. *The Coca Cola Bottling Company of Memphis*, 232 NLRB 794 (1977), and *Rexair, Inc.*, 243 NLRB 875 (1979), cited by the General Counsel in support of this contention are inapposite. In *Coca-Cola*, the employer permitted the use of its offices for the circulation of the petition, directed employees to go to those offices to be solicited, and both encouraged and coerced employees to sign and distribute the petitions. In *Rexair*, the employer, who had unlawfully promulgated a rule prohibiting the distribution of prounion material, knowingly permitted the circulation of an antiunion petition during worktime and did not discipline the employee involved. Here, however, Respondent did not assist in the preparation or circulation of the petitions and did not solicit employees to either sign or circulate them. Moreover, there was no evidence establishing that Respondent permitted the petitions to be circulated in contravention of any company rules; indeed, the employees were told that any circulation had to be on their own time. The General Counsel's theory would seem to rest upon DeRaad's statement to Sweet to the effect that his petition was "a good idea." I cannot find that this statement exceeded the bounds of the Act's "free speech" provisions, Section 8(c).[13]

Accordingly, I shall recommend that this allegation be dismissed.

D. *Direct Bargaining*

Linda Walker Anderson testified credibly, and without contradiction, that on April 30, 1980, while in the breakroom, Supervisor Tom Troeger told her and the other second-shift employees who were there prior to the start of their shift "that we should go in and talk to the Vander Heides [Respondent's president and vice president] about what we wanted because the Union couldn't get anything for us anyway so why wait for them." At the same time, Troeger told the employees that he had received his January 1980 pay raise.[14]

Troeger's statements, I find, tend to discourage union support in several ways violative of Section 8(a)(1); they invite the employees to engage in direct bargaining, in circumvention of the Union's role (see *Mosher Steel Company*, 220 NLRB 336 (1975)); they portray union representation as futile (*Zarda Brothers Dairy, Inc.*, 234 NLRB 93 (1978), and *Capitol Records, Inc.*, 232 NLRB 228 (1977)); and they solicit grievances and impliedly promise benefits to employees who circumvent or forgo the Union as their bargaining agent (*Hamilton Avnet Electronics*, 240 NLRB 781 (1979)).

E. *Interrogation*[15]

On Saturday, July 12, 1980, the Union held a meeting of Respondent's employees. On the following Monday

[11] It should also be noted that at least one of the statements, that of Tom Troeger to Linda Walker Anderson, occurred on the day of the election before Respondent's executives allegedly met in January to decide whether the raises should be deferred. At least as to that statement, Respondent cannot be heard to claim that Troeger was merely setting forth the Employer's legal position.

[12] In his brief, the General Counsel asserted that DeRaad also told Sweet that he opposed the Union and that the employees could help get rid of it. These statements, however, were made in a separate conversation, possibly the earlier one. However, the record does not indicate with any degree of clarity when it occurred.

[13] Sec. 8(c) provides:

> The expressing of any views, argument, or opinion . . . shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

[14] Anderson testified that she could not repeat this statement by Troeger "word-for-word" and that, in regard to his earlier statements concerning the withholding of the wage increases, she "understood him to mean because the union had won." Respondent characterizes such testimony as an acknowledgment by Anderson that she could not accurately recall Troeger's statements and as an admission that her testimony was based on what she "thought" he meant. Such characterizations are unwarranted; few witnesses can honestly give a rendition, *in haec verba*, of a conversation which occurred 12 months earlier. It is a mark of candor for an otherwise credible witness to admit that a conversation is described to the best of his or her recollective ability and may not be accurate on a word-for-word basis. Similarly, it is a simple fact of life that the participants in any conversation draw an understanding of what is being said from the entire context of that conversation.

[15] Respondent contends that this allegation and the allegation discussed in sec. II, C, above are not supported by a timely filed charge and must be dismissed. This contention is without merit. This allegation was initially set forth in the order amending [the consolidated] complaint in

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morning, Shift Supervisor Tom Troeger approached employee Sharon Crowner and asked her how many employees had attended the union meeting. When she said that she did not know, Troeger said, "Well, you were there." Crowner responded that she did not count the number who attended.

Troeger's inquiry sought to establish both the number of employees who were actively supporting the Union and whether Crowner was one of them. When Crowner indicated a reluctance to answer, Troeger went further, and his statement, "Well, you were there," may be deemed either a challenge for her to refute or an indication, in the nature of an impression of surveillance, that management knew who attended union meetings. Such statements, I find, are coercive. As the Board has held:

> [A]n employer's inquiries into the union sentiments of its employees, even in the absence of a threat of reprisal or promise of benefit, or when the employees sympathies are well known, results in an unlawful interrogation in violation of Section 8(a)(1) of the Act.

Edgcomb Metals Co., One of the Williams Companies, 254 NLRB 1085 (1981); *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980);[16] *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975). It is immaterial to this conclusion that Crowner may have had "a fairly open relationship" with Troeger. *Kranco, Inc.*, 228 NLRB 319 (1977).[17]

Accordingly, I find that Troeger's interrogation of Crowner violated Section 8(a)(1) of the Act.

F. *The New Employee Handbook*

Since at least 1972, Respondent had published and distributed to its employees a handbook setting forth company policies, rules, and benefits. Huizingh testified that the supply of these handbooks ran out during 1979 and Respondent retained an employer association to redraft it. On December 17, 1980, Respondent issued the new employee handbooks to its employees with its provisions to become effective on January 1, 1981.

The new handbook is in a different format from the old; it is in looseleaf form so that changes, additions, or deletions may easily be made. According to Huizingh, the only change contained in the new handbook, other than a simplification of the language, was to separate Respondent's absenteeism and tardiness policy in regard to the discipline that would be assigned for each. The General Counsel asserts that there were other changes, including changes in the layoff and recall procedures.

In many instances, the new handbook is merely a reiteration, in less legalistic terms, of the earlier publication. The benefits which it describes are unchanged. There are other areas in which changes were made, however.

Respondent's original handbook described four categories of misconduct and provided different discipline for each, ranging from immediate discharge for certain offenses to degrees of progressive discipline for others. The new handbook merely lists the various offenses and describes a progressive discipline system, warning that: "depending upon the nature, severity of the violation, or combination of violations, the normal discipline procedure steps may be accelerated and a more extensive discipline imposed, up to and including discharge. Certain serious violations by their nature may result in immediate discharge . . ." As Respondent stated, the new manual separates the rules on absenteeism and tardiness. It also establishes a very specific and detailed point system for absenteeism and a program to encourage full attendance.

Respondent's initial handbook contained a specific description as to the permissible length of men's hair. The new handbook merely states that men's and women's hair "must not be excessively long, and should be covered completely by hats or hairnets."

Respondent's original handbook provided for plantwide seniority to govern layoffs exceeding 10 days; departmental seniority governed shorter layoffs except for those of only 1 day or less. Contained within the layoff provisions was the following:

> It is understood that if an employee waives his/her bumping rights in the event of a layoff, such employee thereby forfeits his/her right to work until he/she is eligible for recall in accordance with his/her seniority.

Cases 7-CA-17795 and 7-CA-17890, dated August 19, 1980, as par. 11(e), and the allegation concerning the antiunion petition was alleged as par. 11(b) in that original consolidated complaint. The underlying charges had been filed on May 21 and June 16, 1980, alleging union-motivated discrimination against unit employees and a refusal to bargain, in violation of Sec. 8(a)(1), (3), and (5). Both charges contained the standard boilerplate language: "By these and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act." Such charges amply support this allegation. See *Red Food Store*, 252 NLRB 116 (1980), wherein a charge alleging only a discriminatory discharge of one employee in violation of Sec. 8(a)(1) and (3) (but containing the boilerplate language) was deemed broad enough to support several allegations of 8(a)(1) violations committed at the same site even though the discharge allegation was dismissed by the Regional Director and even though it was not deemed broad enough to support allegations of 8(a)(1) violations supposedly committed at other locations. The act of interrogation and support of the antiunion petition alleged here are clearly related to the acts alleged in those charges and grow out of the same proceeding. Moreover, so long as there is sufficient nexus between the allegations in the charge and those set forth in the complaint, it is immaterial that the violations alleged in the complaint occurred after the filing of the charge. In such a case, no new charge need be filed. *N.L.R.B.* v. *Fant Milling Company*, 360 U.S. 301 (1959). See also *N.L.R.B.* v. *Kohler Company*, 220 F.2d 3, 7 (7th Cir. 1955), where the Court of Appeals stated *inter alia*: "So long as the Board entered the controversy pursuant to a formal charge, it may allege whatever it finds to be a part of that controversy." It cannot be said that interrogation of a union supporter, or support for the circulation of an antiunion petition, is outside the controversy raised by the timely filed charges.

[16] *Hubbard Regional Hospital*, 232 NLRB 858 (1977), cited by Respondent, held, *inter alia*, that a single interrogation of a known union supporter was insufficient to support a finding of coercive interrogation. The record here does not establish that Crowner was a known union supporter at the time of this conversation. Moreover, to the extent that *Hubbard Hospital* relies on the openness of the interrogated employee's union support, it has implicitly been overruled by *PPG Industries*, *supra*.

[17] It is similarly immaterial whether or not Crowner was actually frightened by Troeger's questioning. The test is whether the supervisor's conduct reasonably tended to interfere with the employee's exercise of statutory rights. *Florida Steel Corporation*, 224 NLRB 45 (1976); *Hanes Hosiery*, *supra*.

These provisions were revised in the newly issued manual. Distinctions between temporary, short, and extended layoffs are no longer made. The new handbook provides only for the retention of the most senior person in the department with the ability to perform the work.

Respondent's new employee handbook contains no reference to the Union or to unions in general. It states, in regard to wage rates, that the Company "participate[s] in yearly wage surveys to make sure that our wage levels keep pace and also that changes in the cost of living are taken into account. Adjustments to these base wage levels are made whenever appropriate." Where the original described a two-step procedure for suggestions, inquiries, and complaints, the new handbook sets forth an "Open Door Policy," as follows:

> The purpose of the "Open Door" is to foster good upward communication. Your immediate supervisor is in the position to help you with a problem. However if you have spoken to your supervisor and are not satisfied with the results, any member of top management is available to discuss the situation with you.
>
> If you wish to speak to another member of management a good first step is to inform your supervisor. The supervisor can then recommend who would be the next best person to talk to. Your supervisor can also make an appointment for you.

Respondent did not consult with the Union prior to the publication of the new employee handbook. Its failure to do so, I find, violated Section 8(a)(5) and (1) of the Act. The new handbook is no mere reiteration of the old; it contains new provisions in the areas of discipline and layoff, at least which vitally affect unit employees. It was drafted and promulgated during a period when, as previously stated, Respondent was under an obligation to bargain with the Union about changes in the terms and conditions affecting its employees, yet it ignores the Union and its role in collective bargaining and grievance resolution. The employees' representative was, I find, improperly denied its proper role in the manual's preparation.

G. *The Layoff of James M. Host, Jr.*

1. The facts

James Host, Jr., was a band oven helper, hired on August 15, 1978, working on Respondent's third shift. He was a member of the Union's organizing committee and spoke in favor of the Union to other employees while at work between August 1979 and the election. He continued to discuss the Union with his fellow employees after the Union's election victory. He was not an officer in the Union and had no other role in it.

Host's union activity had been observed by his immediate supervisors. Thus, as early as mid-August 1979, Foreman Chuck Steimel told Lynn Blackmore, Host's sister, that she should not get involved with the Union and that her brother "has a mouth on him and he is going to end up getting fired." Similarly, Foreman Gary Chipman, after observing Host speaking with Debra Van Os about the election, sent Host back to his line and told Van Os that Host "had better watch his mouth around here." Employees normally spoke with one another while they were working but did not normally stop working to engage in such conversations. According to Van Os, there had been other occasions when employees from another line or department would come over and talk to her during working hours and, on some of those occasions, Chipman had told them to go back to work.

About 2 weeks prior to the election, employee Laura DeVries talked to Chipman in the lunchroom concerning Host. Chipman told her that if Jim Host kept "talking about the Union that he would eventually not be employed there." At or about the same time, Host confronted Chipman and an angry discussion ensued. Host asked what right Chipman had to harass his line workers on the upcoming election. He accused Chipman of telling the employees not to listen to Host and threatening that Host would be discharged if he did not "keep [his] mouth shut." Host told Chipman that he was not afraid of him and wanted him off his back.[18] At the conclusion of this argument, Host and Chipman came to an understanding and Chipman apologized. There were no further run-ins between the two.[19] These events are not alleged as violations of the Act inasmuch as they antedate the commencement of the statutory 10(b) period.

Between July and September 30, 1980, Respondent lost one of its major customers, a customer which accounted for approximately 40 percent of its production. Prior to this loss, Respondent was operating four band ovens on a continuous three-shift basis. It cut back to two ovens and laid off much of the third shift. There is no contention that the layoffs were not economically motivated.

Among the employees laid off was James Host, on October 16, 1980. He remained on layoff status until February 6, 1981. At the end of his last shift, Host asked Huizingh why he was being laid off when there were people with less seniority in his department on other shifts. Huizingh told him that the layoff followed past practice and was being accomplished by shift only. When Host asked if he could bump into another shift or department, Huizingh refused, telling him that the layoff was being done according to the normal shift. When asked whether individual employees were allowed to bump between shifts as they were being laid off, Huizingh testified, "there really was no need because as we were gearing down to the size that we were going to, first of all on the third [shift] there were primarily, I would say, 99 percent all 1980 hirees, and we eliminated them all together."

According to Huizingh, no helpers with less seniority than Host continued to work after he was laid off. However, during the period of Host's layoff, one helper with less seniority than Host, James Sanders, was recalled several times. Thus, the summary of layoffs and recalls and

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[18] DeVries overheard an argument, possibly the same one, between Chipman and Host wherein Chipman told Host that Host did not have "the right to be talking to his girls about the Union while they were working or at any time . . . that he shouldn't be talking to any of the girls about the Union."

[19] The foregoing testimony was credibly offered and is uncontradicted.

Sanders' absentee calendar indicate that Sanders was initially laid off on August 28, 1980. He was recalled on October 6, and worked on October 6-9, 13, 14, 15, and 20. He was recalled and worked November 24-25. He was then laid off again until December 12 when he was recalled and worked through December 19. He then returned to layoff status until February 19, 1981, subsequent to Host's recall.

In sum, it appears that James Sanders, with less seniority than Host, worked on October 20, and was recalled for 2 days in November and 5 or 6 days in December while Host was still on layoff. Huizingh does not recall why Sanders worked on October 20; he postulated that it was to replace someone who was ill. He testified that Sanders was recalled for 2 days in November to replace someone who had been disciplinarily laid off and was recalled on December 12 to replace someone who was ill. Huizingh and the personnel director made the decision to recall Sanders and in doing so did not consider the effect on Host. Had they followed seniority, Huizingh claimed, it would not have been Host who was recalled; it would have been Gregory Lindsey whose seniority antedates Host's by approximately 1 month.[20]

In fact, according to Respondent, inverse seniority was followed for these short periods of recall. Thus, Huizingh testified that the decision to recall Sanders was made because management believed that the recalls would be for periods of less than a full week and that to recall a more senior employee for such periods would reduce the recalled employee's rights to unemployment compensation and actually cost him money.[21] The choice, however, was not offered to the more senior employees. Sanders was the least senior employee Respondent was able to reach for these recalls.

Although Huizingh testified that employees were not permitted to bump to other shifts in order to avoid layoff, he acknowledged that one employee in Host's helper classification, Ed Boeve, who had greater seniority than Host, was permitted to do so. There does not appear to have been anyone in the helper classification with less seniority than Host (other than Sanders) who continued to work whom Host could have bumped. However, there were a number of employees in the line worker, packer, and packer maintenance classifications who continued to work, or who were recalled earlier than Host, despite the fact that they had less seniority than Host. When he was ultimately recalled to work, Host worked as a line worker and in packing before he returned to his own line helper classification. He also spent some time helping a maintenance worker.

As previously noted, the employee handbook in effect in October 1980 provided for plantwide rather than departmental seniority to be applied in all cases of layoffs exceeding 10 days. Departmental seniority was to be applied only in layoffs not exceeding 10 days. Respondent acknowledged that it did not follow the provisions of this handbook for the layoffs which took place in the last quarter of 1980.

Host's sister, Lynn Blackmore, had a conversation at work with one of the third-shift supervisors sometime between about December 10 and 15. She told the supervisor, Henry Skytema, that her brother supported the Union and that she knew that the Company did not plan on calling him back. Skytema replied, "Yes." Blackmore told Skytema that she thought that the Company had been unfair, that it was not right for them to refuse Host's request to bump from one shift to another while permitting Ed Boeve to do so. Skytema's only reply to that was "the Company did a lot of things which were not fair."

On the Friday before the Christmas holiday, Host joined a group of people from the third shift at a bar near the plant. While there he spoke to a third-shift foreman, Butch Tufflemmeyer. When he told Tufflemmeyer that he had heard that he was not going to be called back, Tufflemmeyer told Host that he, too, was aware of the fact that Host was not going to be called back.

As noted, Host was called back on February 6, 1981.

2. Analysis and conclusions

While I deem the circumstances to warrant suspicion, I cannot conclude from this record that Respondent's failure to recall Host on those occasions when it recalled Sanders was discriminatory. Respondent's explanation that it used inverse seniority for such brief periods of recall is not inherently implausible, is uncontradicted, and is somewhat supported by other evidence. Moreover, Respondent's contention that Host would not have been the employee to be recalled had normal seniority been applied similarly seems to be supported by the record; Host was not the most senior helper on layoff status, Lindsey was.

However, I believe that this record presents an unrebutted *prima facie* case establishing that Host was discriminatorily denied the opportunity to use his plantwide seniority and bump into another classification in order to avoid layoff. Thus, the record is replete with evidence of animus toward Host for his union activities; it also contains unrebutted evidence of supervisory acknowledgment that Respondent did not intend to recall Host. Moreover, the application of departmental seniority to Host's layoff was in direct contravention of Respondent's own published seniority provisions calling for plantwide seniority in such situations. And, bumping was, as the handbook implicitly acknowledged, an established part of the layoff procedure. Respondent treated Host disparately *vis-a-vis* at least one other employee, Boeve, who was permitted to bump in order to avoid layoff. I note, in this

[20] The record does not substantiate the General Counsel's contention that Lindsey actually had less seniority than Host. Lindsey's hire date, as indicated in the summary of layoffs and recalls and on the appropriate line on his 1981 attendance calendar, was July 14, 1978, 1 month prior to Host. However, he started as a part-time worker and did not become employed as full-time until May 12, 1980. His part-time status and the date of his change to full-time are reflected on his 1980 attendance calendar. The seniority provisions contained in both the old and the new employee handbooks provide for seniority to be determined "from the last date of hire." No distinction is made therein between full- and part-time employees and there was no evidence that Respondent considered a full-time employee not to have acquired seniority during a period of part-time employment.

[21] Respondent's contention appears to be somewhat substantiated by the record of layoffs and recalls of Dale Hancock, a packer maintenance worker. Hancock was recalled twice between October 9 and November 14, 1980, for approximately 10 and 4 days respectively, while others in his classification with greater seniority remained on layoff.

regard, that Host was obviously qualified to work in other classifications; it was to such work that he was assigned when he was finally recalled. Accordingly, I must conclude that by refusing to permit James Host to utilize his plant seniority in order to avoid or shorten his layoff, Respondent has discriminated against him in violation of Section 8(a)(3) and (1) of the Act.

ADDITIONAL CONCLUSIONS OF LAW

1. At all times since October 18, 1979, Local No. 70, Bakery and Confectionery Workers International Union, AFL-CIO, has been, and is now, the exclusive collective-bargaining representative of Respondent's employees in the following unit which is appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees and shipping and receiving employees employed by Holland American Wafer Company at its Grand Rapids, Michigan, facility; but excluding all transport drivers, salesmen, office clerical employees, guards and supervisors as defined in the Act.

2. By threatening employees that wage increases would be withheld or delayed because they selected the Union to represent them, by advising employees that wage increases had been withheld or delayed for that reason, by interrogating employees concerning their union activities and the union activities of other employees, and by soliciting employees to engage in direct bargaining with their employer, Respondent has violated Section 8(a)(1) of the Act.

3. By withholding or delaying wage increases because the employees selected the Union as their collective-bargaining representative and by delaying the recall of James Host from layoff status because of his union activities, Respondent has violated Section 8(a)(3) and (1) of the Act.

4. By unilaterally changing the terms and conditions of employment of the employees in the appropriate unit described above by delaying or withholding scheduled wage increases and by publishing and promulgating a new employee handbook containing changed provisions and rules without notice to or bargaining with the Union, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent did not engage in any unfair labor practices not specifically found herein.

THE REMEDY

It having been found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, my recommended Order will require that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Respondent has contended that the wage increase which it granted effective as of May 15, 1980, was larger than would normally have been given so that the employees would earn, by the end of that year, the same amount as if they had been granted their normal, but smaller, raise in January. As I found that the withholding or delay in the granting of the January wage increase was violative of Section 8(a)(3) and (5) of the Act, I shall recommend that Respondent be required to make whole its employees for any loss of earnings they may have suffered by reason of that delay or withholding of wage increases to the extent that they have not already been made whole. The determination as to whether they have already been made whole is one which is most appropriately made in the compliance stage of these proceedings. As I have found that Respondent discriminatorily delayed the recall of James Host, I shall recommend that Respondent be required to make him whole for any loss of pay he may have suffered by reason of the discrimination against him. All backpay due under the terms of this Order shall be computed, with interest, in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[22]

As I have found that Respondent's publication and promulgation of its new employee handbook violated Section 8(a)(5) of the Act, I shall recommend that Respondent be required to revoke that handbook to the extent that its terms vary from the terms of the earlier existing employee handbook.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[23]

The Respondent, Holland American Wafer Company, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees that wage increases would be withheld or delayed because they selected the Union as their collective-bargaining representative, or advising them that wage increases had been withheld or delayed for that reason.

(b) Interrogating employees concerning their union activities or the union activities of other employees.

(c) Soliciting employees to engage in direct bargaining with their employer.

(d) Delaying or withholding the granting of wage increases because the employees had selected the Union as their collective-bargaining representative.

(e) Discriminating against employees by delaying their recall from layoff status because of their union activities, membership, or support.

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[22] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(f) Unilaterally delaying or withholding the granting of scheduled wage increases or publishing and promulgating employee handbooks containing changed provisions and rules without notice to and bargaining with Local No. 70, Bakery and Confectionery Workers International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees and shipping and receiving employees employed by Respondent at its Grand Rapids, Michigan, facility; but excluding all transport drivers, salesmen, office clerical employees, guards and supervisors as defined in the Act.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Revoke the employee handbook which was issued effective January 1, 1981, to the extent that its provisions and rules are inconsistent with the employee handbook which was in existence prior to that date.

(b) Make its employees, including James Host, whole for any loss of earnings they may have suffered by reason of discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Upon request, bargain collectively and in good faith with Local No. 70, Bakery and Confectionery Workers International Union, AFL-CIO.

(d) Post at its place of business in Grand Rapids, Michigan, copies of the attached notice marked "Appendix."[24] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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[24] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."